



December 29, 2004

**VIA TELECOPIER (202) 219-3923 (Excluding Exhibits) &  
VIA UNITED STATES OVERNIGHT MAIL**

Federal Election Commission

General Counsel Office

Attention: Jeff S. Jordan (or paralegal Kim Collins Stevenson)

Supervisory Attorney Complaints Examination &

Legal Administration

999 East Street, N.W.

Washington, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2004 DEC 30 P 12:02

RE.: Ciyou & Dixon, P.C. Client: World Class Gun Shows, Inc.  
Your File #: MUR5595

**RESPONSE TO COMPLAINT**

Dear Mr. Jordan:

**Introduction and Identification of Issues**

Please let me take this opportunity to re-introduce myself. My name is Bryan Lee Ciyou, and I am general counsel for World Class Gun Shows, Inc. (hereinafter "WCGS").<sup>1</sup> I am writing to you to respond to a complaint filed with the FEC and marked by your office as MUR5595 (hereinafter "MUR5595"). As such, please consider and accept this faxed letter (with original to follow by overnight mail today) as WCGS' formal, written Response to Complaint (hereinafter "Response"), all in accordance with the FEC's written Description of Preliminary Procedures for Processing Complaints Filed With The Federal Election Commission.

This Response clearly demonstrates that no action should be taken against WCGS for violation of the Federal Election Campaign Act of 1971, as amended (hereinafter "Act"), as alleged in MUR5595. As such, MUR5595 should, upon review, and consideration herewith, be dismissed and the file and matter closed. Specifically, WCGS did not make an encompassed electioneering

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<sup>1</sup> You will note that a Statement of Designation of Counsel of the undersigned has previously been filed with the Federal Election Commission on or about November 23, 2004.

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communication under 11 C.F.R. § 100.29(a) by referring to a clearly identified candidate for Federal office, nor did it fail to have the requisite disclaimer on a public communication that is an electioneering communication under 11 C.F.R. §110.11(a)(4).

While the latter disclaimer is the basis of Ms. Jennifer L. Messer's (hereinafter "Complainant") request for the FEC to investigate the radio ad she heard "[o]n October 26, 2004, at approximately 6:35 p.m. . . .[on]WFBQ, an Indianapolis, Indiana station"<sup>2</sup>, this issue is only reached if the advertisement is an electioneering communication that refers to a clearly identified candidate for Federal office. To properly address the alleged violation of the Act, therefore, WCGS addresses both issues herein.

**Radio Advertisement Heard By Complainant Did Not Refer To Any  
Clearly Identified Candidate For Federal Office**

The threshold issue in addressing the claim of the Complainant is to determine if the radio ad broadcast on WFBQ referred to a clearly identified candidate for Federal office. Clearly, it did not.

Precisely, the Complainant is incorrect in her belief that the radio broadcast in question referred to a clearly identified candidate, namely then presidential candidate John Kerry, all encompassed within and under 11 C.F.R. § 100.29(a)(1). Despite the Complainant's assertion to the contrary, the reference in the radio advertisement to a "carry permit" does not reference any clearly identified political candidate for any office. In fact, the theme of the ad, to solicit attendance at the gun show, is a hunting trip with fictional characters.

A brief segway into Indiana law (and that of most all other states) makes clear that the language cited in the radio broadcast referring to "carry" (and presumably was confused by the Complainant) is embedded within the Indiana statutory scheme for obtaining a license to carry a handgun with an Indiana-issued license, said statute having been on the books in various forms since 1983. *See Ind.Code 35-47-2-3.*<sup>3</sup>

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<sup>2</sup> An exact duplicate of the radio advertisement broadcast on WFBQ, and the subject of this alleged violation of the Act, is annexed hereto as Exhibit "1". This is a CD with the ad in its entirety.

<sup>3</sup> *As added by P.L.311-1983, SEC.32. Amended by P.L.26-1990, SEC.15; P.L. 48-1993, SEC.5; P.L.140-1994, SEC.6; P.L.269-1995, SEC.6; P.L.2-1996, SEC.284; Amended by P.L.27-2001, SEC.1; P.L.120-2001, SEC.1.*

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This noted, there are over 300,000 Indiana-issued carry permits to carry a handgun under this statutory authority.<sup>4</sup> The most common (and almost exclusively used) nomenclature for this Indiana-issued license to carry a handgun is a "carry permit". This is, in fact, a term of art in the gun community (See Affidavit of Russell Elmore annexed hereto as Exhibit "2"). Moreover, the Indiana courts, in deciding firearms' cases, have typically (and over a long period of time) not addressed a licensed individual by referring to an Indiana license to carry a handgun, but have written and referred to same as a "permit", "carry permit", or "carry license", and the like. *See, e.g., Shettle v. Shearer*, 425 N.E.2d 739, 742 (Ind.Ct.App. 739). Thus, it is simply a logical *non sequitur* that this radio advertisement clearly referred to John Kerry.

Furthermore, the undersigned counsel for WCGS, is the author of *Indiana Handgun Law*, 2005, and has literally discussed the entire spectrum of handgun license issues with individuals ranging from law professors, prosecutors, defense attorneys, judges, and legislators to your "average Joe". In this context, and universally, all such individuals refer to a license to carry a handgun as a "carry permit" (See Affidavit of Bryan Lee Ciyou at Exhibit "3"). As a practical matter of semantics, the undersigned submits that there is simply no mechanism to refer to the ability to purchase and carry a firearm under Indiana law<sup>5</sup> without referring to the term "carry". To do so, as noted herein above, would necessitate and require overturning and/or clarifying a long line of Indiana caselaw precedent and re-write of the Indiana statutes on same.

Finally, gun shows are very expensive and complex operations to organize and conduct. The inherent objective of said shows is the desire for the dealers, who pay to set up at same, to sell guns, primarily handguns. Because of this, it is common place in the advertising for gun shows, in all media, for the term "carry permit" to be used and utilized because it reminds attendees to bring their carry permits with them. Without same, purchasing a handgun is a cumbersome and time-consuming process because customers not only have to fill out an ATF Form #4473 and have an instant background check conducted, but, additionally, the customer has to complete Indiana State Form 49075(9/98) and have a State instant background check conducted. Thus, there is twice the work, twice the time required, and twice the potential for a problem to occur to prevent the transaction (e.g., phone lines busy).

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<sup>4</sup> This may be verified by the Firearms' Licensing Section of the Indiana State Police.

<sup>5</sup> Across the various states that have handgun carry laws, and even on a national basis through and in the federal courts, handgun licenses are often referred to as "carry permits" or "permits to carry". *See, generally, Firearms Law Deskbook*, Stephen P. Halbrook (2003 ed. West Publications).

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Thus, while it is undisputed that the Complainant heard the term "carry permit" used in the enumerated radio ad, it did not refer to a clearly identified candidate for Federal office. Furthermore, assuming *arguendo* that the Complainant literally believed that said ad referred to John Kerry, this does not rise to the "clearly identified" standard set forth in the C.F.R. **To do so would have required that John Kerry to be named fully, or be identified with an unambiguous label, such as the "democratic candidate for president", or as set forth in the C.F.R. itself "the Democratic presidential nominee"** (emphasis added). The term was used as a necessary part of advertising for this event, nothing more, nothing less.

**Radio Advertisement Heard By Complainant Did Not Require Any Disclaimer**

In keeping with the intent/spirit of the Complainant (despite the fact same was not raised by her), WCGS addressed whether the radio advertisement cited was an electioneering communication, therein naming a clearly identified candidate for Federal office. It was not. This noted, it is clear from the advertisement in question that WCGS is a company whose sole focus of business operations is to set up and conduct gun shows.

This noted, and first, under the relevant administrative section, it is clear that WCGS was not required to provide a disclaimer on the radio advertisement in question because it was not a public communication for which a political committee makes a disbursement. Counsel for WCGS, moreover, has examined the corporation and finds that it is in no way legally classified and considered a "political committee" under state or federal law. *See* 11 C.F.R. § 110.11(a)(1).

Second, any reading of a transcript or audio replay of the radio advertisement in question leaves no question that this public communication did not expressly advocate the defeat of a clearly identified candidate. As previously noted, there was no clearly identified political candidate for Federal office in the radio advertisement. Furthermore, as a practical matter without even addressing identification of any candidate, there was no language whatsoever advocating election or defeat of any candidate. Thus, the advertising for the gun show was not an encompassed public communication and no disclaimer was required. *See* 11 C.F.R. § 110.11(a)(2).

Third, again considering any available review of radio advertisement, there is no solicitation of any contribution to any person or party. The radio ad merely invited interested listeners to the gun show. Thus, the advertising for the gun show was not an included public communication and no disclaimer was required. *See* 11 C.F.R. § 110.11(a)(3).

Fourth, (and the central reason that WCGS previously addressed its radio ad, and whether it was an electioneering communication) is whether a disclaimer was required, as alleged by the Complainant, because the ad for the gun show was an electioneering communication. It was not.

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The ad makes no reference to any person, let alone a clearly identified candidate for Federal office. Thus, the advertising for the gun show was not an included public communication and no disclaimer was required. See 11 C.F.R. § 110.11(a)(4).

### Conclusion

Thank you for this opportunity to respond to the alleged violation of the Act by WCGS and the extension of time to properly prepare this Response. I trust that this Response more than adequately demonstrates that no action should be taken against WCGS, the case dismissed, and the file closed. While it is perhaps unfortunate that the Complainant took this to be a political advertisement requiring a disclaimer, it was not a political statement, electioneering communication, or the like. The radio ad was nothing more than WCGS engaging in its usual and ordinary course of business and constructing advertisement in accordance with firearms' terminology utilized in Indiana and throughout the Nation.

WCGS sincerely apologizes for any concern this may have caused the Complainant. However, WCGS believes this was isolated to Complainant's own evaluation and unique perceptions when listening to this broadcast, as no other complaints have been received by WCGS of any kind based on this radio advertisement, despite Indianapolis being a very large regional radio market and thousands upon thousands of persons listening to same. If you need any additional information or have any questions, or believe this Response is incomplete in any fashion and needs clarification, please do not hesitate to contact me.

Very truly yours,

**CIYOU & DIXON, P.C.**

  
Bryan Lee Ciyou

Bryan Lee Ciyou  
**CIYOU & DIXON, P.C.**  
320 North Meridian Street, Suite 311  
Indianapolis, Indiana 46204  
Telephone: (317) 972-8000  
Telecopier: (317) 955-7100

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**AFFIDAVIT OF RUSSELL W. ELMORE**

I, Russell W. Elmore, swear and affirm under penalty of perjury that the following is true and accurate to the best of my belief and knowledge:

1. That my name is Russell W. Elmore, and I have first hand knowledge of the facts herein.
2. That I have been professionally involved (and licensed) in the Indiana firearms' business for the past thirty (30) years.
3. That I am fifty five (55) years of age.
4. That during the last thirty (30) years, I have been involved in the gun business and have acted in variety of contexts, repairing and building firearms and selling firearms and accessories.
5. That in this capacity, I have worked with the wholesale and retail consumer, from state and federal law enforcement to the general public.
6. That presently, I have one of the best selections of firearms in the state and have earned a strong reputation for honesty and integrity.
7. That in the course of my business operations, I have engaged in tens of thousands of transactions.
8. That I am routinely consulted by those with firearms' questions due to my vast knowledge in the field.
9. That in this capacity, I am very aware of the nomenclature, lingo, terms of art, and language of this industry.
10. That specifically, I know that virtually every Indiana handgun license holder refers to same as a "carry permit".
11. That even though exempted from licensing, law enforcement officers too refer to a handgun licensee as holding a "carry permit".
12. That I could literally name hundreds, or thousands, of individuals and patrons who believe the Indiana License to Carry Handgun is called a "carry permit."
13. That I hear this term on a daily basis.
14. That I am aware of no usage of this term that related to presidential candidate, John Kerry.

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15. That while I am providing this affidavit on behalf of World Class Gun Shows, Inc., I have no affiliation with them. am not being paid for same, and have had no contact with their operations for many years, when I used to set up as a vendor at said shows.
16. That I am signing this affidavit by fax as an original, but will be happy to provide an original and/or notarized version of same if so requested

FURTHER, AFFIANT SAITH NOT.

I, Russell W. Elmore, swear and affirm under penalty of perjury that the foregoing is true and accurate to the best of my belief and knowledge

Dated: Dec. 29, 2004

Russell W. Elmore  
Russell W. Elmore

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**AFFIDAVIT OF BRYAN LEE CIYOU**

I, Bryan Lee Ciyou, swear and affirm under penalty of perjury that the following is true and accurate to the best of my belief and knowledge:

1. That my full legal name is Bryan Lee Ciyou, and I have first-hand knowledge of the facts stated herein.
2. That I am a resident of Marion County, State of Indiana, and am 37 years of age.
3. That I am an attorney licensed to practice law in the State of Indiana; that I have been licensed for ten (10) years; and that I am an attorney in good standing with the Indiana Supreme Court.
4. That I am admitted to practice before all Indiana State and federal bars, the 7<sup>th</sup> Circuit Court of Appeals, and the United States Supreme Court.
5. That I have a personal and professional interest in firearms, and have worked on a wide variety and numerous cases involving firearms' matters.
6. That I have recently completed writing and publishing the definitive legal reference on Indiana gun law, covering both state and federal laws, rules, and regulations.
7. That based on the foregoing, I am an expert in firearms' law; and that as such, I am in a position to know that Indiana handgun licensees universally in refer to this license as a "carry permit".
8. That this nomenclature has been the prevalent, and almost exclusive, language to refer to an Indiana-issued license for at least the last decade.
9. That it would be effectively impossible for any individual, including World Class Gun Shows, Inc. to meaningfully discuss an Indiana-issued license and conduct business affairs associated with their business without referring to a "carry permit".
10. That I have personally observed the operations of World Class Gun Shows, Inc., and know them to be a reputable business engaged in setting up and conducting gun shows; and that World Class Gun Shows, Inc., is in no way a political party or organization.

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FURTHER, AFFIANT SAITH NOT.

I, Bryan Lee Ciyou, swear and affirm under penalty of perjury that the foregoing is true and accurate to the best of my belief and knowledge.

Dated: December 29, 2004

Bryan Lee Ciyou

Bryan Lee Ciyou, Attorney at Law

Indiana Law License Number: 17906-49

STATE OF INDIANA       )  
                                  )SS:  
COUNTY OF MARION     )

Before me, a Notary Public, in and for said County and State, personally appeared Bryan Lee Ciyou, who acknowledged the execution of the foregoing document.

WITNESS, my hand and Notarial Seal this 29<sup>th</sup> day of December, 2004

Mary L. Hemmelgarn  
Notary Public's Signature

MARY L. HEMMELGARN  
Printed Name

My Commission Expires: July 15, 2006

My County of Residence: Marion

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